



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 85-2

TO: A. Kenneth Dunn, Director
Department of Water Resources
Statehouse Mail

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Does the Idaho Water Resource Board have the authority to issue revenue bonds for the purpose of loaning the proceeds to a local water project sponsor to construct a hydroelectric power project which serves no other water development, usage or conservation purposes?

CONCLUSION:

Yes. The Idaho Water Resource Board has the authority to issue revenue bonds for the purpose stated in the question presented. Idaho Code § 42-1734(x) authorizes the board to issue the proceeds of the sale of revenue bonds to local water project sponsors. Since there is no statutory language evidencing a contrary intent, the term "water project" must be construed to encompass purely hydroelectric power projects.

ANALYSIS:

The Idaho Resource Board was established pursuant to the provisions of article 15, section 7, of the Constitution of the State of Idaho. Idaho Code section 42-1732 establishes the board as the constitutional agency within the department of water resources. Thus, the board, while operating within the department of water resources, has its own constitutional and legislative existence and duties. Idaho Code § 42-1734(x) authorizes the board to issue revenue bonds:

To loan without prior legislative approval, the proceeds of the sale of revenue bonds to the local water project sponsor or sponsors; to enter into lease, sale or loan agreement; and to purchase all or a portion of, or participate in, loans, originated by private lending institutions.

The determinative question is whether the term "water projects" encompasses a hydroelectric project that has no irrigation benefits. The legislature did not include a definition of "water project" in the act now in question and legislative history concerning the act is scant and inconclusive. Furthermore, research reveals no case law that would be helpful in the matter. Therefore, it is necessary to glean the meaning of the words, applying well-recognized rules of statutory construction.

In construing statutes the Idaho Supreme Court has enunciated the following principles:

In the absence of some manifestation to the contrary we must assume the legislature intended the ordinary import of the words it used. Nicolaus v. Bodine, 92 Idaho 639, 641, 448 P.2d 645, 647 (1968).

When the language used in a statute has a definite, clear meaning and applies to a certain case, the courts must give effect to that meaning whether or not the individuals comprising the legislature anticipated the result. Unity Light & Power Company v. City of Burley, 83 Idaho 285, 289, 361 P.2d 788, 790 (1961).

In construing a statute, it is the duty of this court to ascertain the legislative intent, and give effect thereto. In ascertaining this intent, not only must the literal wording of the statute be examined, but also account must be taken of other matters, "such as the context, the object in view, the evils to be remedied, the history of the times and of the legislation upon the same subject, public policy, contemporaneous construction, and the like." Messenger v. Burns, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963).

The most fundamental premise underlying judicial review of the legislature's enactments is that, unless the result is patently absurd, the courts must assume that the legislature meant what it said. Where a statute is clear and unambiguous the expressed intent of the legislature must be given effect. State, Department of Law v. One 1955 Willys, 100 Idaho 150, 153, 595 P.2d 299, 302 (1979).

A statute is to be construed in consideration of the reason for the statute, its object and purpose and thereby ascertain and render effective the legislative intent. State v. Hoch, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

Examining the act in question with the above quoted principles in mind mandates a conclusion that the board has the authority to issue revenue bonds for the purpose of loaning the proceeds to a local water project sponsor of a hydroelectric project.

Article 15, section 7, of the Constitution of the State of Idaho vests the Water Resource Agency with certain enumerated powers. It reads as follows:

There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest; to construct and operate water projects; to issue bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature.

The above quoted amendment to the state constitution, passed in 1964, charges the agency with the responsibility to "implement a state water plan for optimum development of water

resources in the public interest. . . ." (Emphasis added.)
Such a plan must include both the most efficient utilization of hydroelectric power, and also the most efficient method of generating hydroelectric power.

Article 15, section 7, also authorizes the Water Resource Agency "to generate and wholesale hydroelectric power at the site of production. . . ." This authority is not limited to hydroelectric power projects with associated irrigation benefits. It would appear incongruous, absent a specific prohibitory provision, if the board's parallel authority to participate in the indirect financing of local hydroelectric power through revenue bonds was limited to projects with irrigation benefits.

Idaho Code § 42-1731 reads as follows:

The welfare of the people of this state is dependent upon conservation, development and optimum use of our water resources. To achieve this objective and protect the waters of Idaho from diversion out of state, it is essential that a coordinated, integrated, multiple use water resource policy be formulated and a plan developed to activate this policy as rapidly as possible. It is in the public interest that these functions be carried out by a single state agency.

The issuance of revenue bonds for local hydroelectric projects conforms to this declaration of intent. The issuance of said bonds will enable the state to develop the optimum use of its water resources and protect the waters of Idaho from diversion out of state.

Idaho Code § 42-1734(s) also gives some guidance to this question. It states in pertinent part that the agency is empowered to "issue revenue bonds for the rehabilitation and repair of existing irrigation projects and irrigation facilities, and for water projects, . . ." (Emphasis added.) If the term "water project" was intended to mean only irrigation projects, the above quoted language would be superfluous.

Although no definition of "water project" exists within the act in question, the term is defined for purposes of the code sections concerning the revolving development fund. Idaho Code § 42-1751(d) states:

"Project" means any project by means of which water should be utilized or benefits accrue within this state for purposes within the limitations of this act.

Obviously, any hydroelectric project would have to utilize water within this state and, if found worthy of revenue bond support by the board, would be for purposes within the limitations of this act.

On April 15, 1983, the Water Resource Agency adopted rules and regulations in order to administer the revenue bond program. Rule 2, 3 defines an eligible program as follows:

"Eligible project" means a project in Idaho in conformance with the State Water Plan developed pursuant to Article 15, Section 7, Idaho Constitution, which has been approved for financing by an eligible financial institution. Projects may include but are not limited to the drainage or irrigation of agricultural property, the provision of domestic and municipal water supplies, energy production, flood control, fish and wildlife, recreation, agriculture, or water quality. Projects with multiple water uses are encouraged, however, secondary water uses that could be included in a multi-purpose project shall be consistent with the primary purpose.

Thus, while priority is given to "projects with multiple water uses," the agency believes it has the authority to issue revenue bonds for projects with the single purpose of "energy production." Although the agency's interpretation is by no means controlling, it should be given deference:

A construction given a statute by executive or administrative officers of the state is entitled to great weight and will be followed by the court unless there are cogent reasons for holding otherwise. Idaho Public Utilities Commission v. V-1 Oil Company, 90 Idaho 415, 420, 412 P.2d 581, 583 (1966).

In the instant case there are no cogent reasons for holding otherwise. The authority to issue revenue bonds is consistent with the broad powers and duties given to the Water Resource Agency by the state constitution and legislative enactment.

Besides deciding whether the board has the authority to issue said bonds, it must also be determined whether the issuance of revenue bonds is constitutionally permissible. However, examination of the issue in detail in this opinion is not necessary. The Idaho Supreme Court has already decided that the issuance of revenue bonds is constitutionally permissible. Idaho Water Resource Board v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976). The issuance of revenue bonds for hydroelectric projects is authorized by statute and constitutionally permissible.

SUMMARY:

Idaho Code § 42-1734(x) authorizes the board to issue revenue bonds to a local water project sponsor. The term "water project" is not defined. However, the act in question manifests no legislative intent to exclude purely hydroelectric projects from within the definition. It is statutorily authorized and constitutionally permissible for the Idaho Water Resource Board to issue revenue bonds to a local water project sponsor to construct a hydroelectric power project which serves no other water development, usage or conservation purpose.

AUTHORITIES CONSIDERED:

1. Idaho Constitution

Art. 15, § 7.

2. Idaho Code

Sections 42-1731, 42-1732, 42-1734(s), 42-1734(x), 42-1751(d).

3. Idaho Cases

- a. Unity Light & Power Company v. City of Burley, 83 Idaho 285, 289, 361 P.2d 788, 790 (1961).
- b. Messenger v. Burns, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963).
- c. Idaho Public Utilities Commission v. V-1 Oil Company, 90 Idaho 415, 420, 412 P.2d 581, 583 (1966).
- d. Nicolaus v. Bodine, 92 Idaho 639, 641, 448 P.2d 645, 647 (1968).

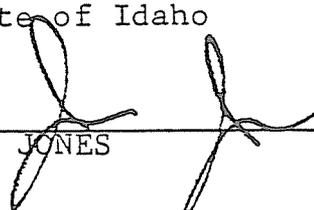
- e. Idaho Water Resource Board v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).
- f. State, Department of Law v. One 1955 Willys, 100 Idaho 150, 153, 595 P.2d 299, 302 (1979).
- g. State v. Hoch, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

3. Other Authorities

Idaho Water Resource Agency Rules and Regulations,
Rule 2, 3, (April 15, 1983).

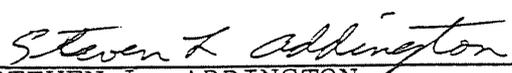
DATED this 31st day of May, 1985.

ATTORNEY GENERAL
State of Idaho



JIM JONES

ANALYSIS BY:



STEVEN L. ADDINGTON
Deputy Attorney General
Natural Resources Division